

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DARRON LAMAR HEREFORD,

CIVIL CASE NO. 04-40293

Petitioner,

v.

HONORABLE PAUL V. GADOLA
U.S. DISTRICT JUDGE

MILLICENT WARREN,

Respondent.

_____/

**ORDER ACCEPTING AND ADOPTING THE MAGISTRATE'S
REPORT AND RECOMMENDATION AND STAYING THE JUDGMENT**

This is habeas corpus action, pursuant to 28 U.S.C. § 2254, in which Petitioner challenges his state court conviction for armed robbery. On March 30, 2007, the Court accepted and adopted Magistrate Judge R. Steven Whalen's Report and Recommendation, recommending that Petitioner's motion for summary judgment as to his petition for habeas corpus be granted. *See* docket entry #38. The Court then granted Petitioner a conditional writ of habeas corpus and ordered that Petitioner be unconditionally released if a schedule for a new trial was not set within 120 days of the order. The judgment on this matter was entered on the same day. *See* docket entry #39.

On April 20, 2007, Respondent file a notice of appeal and a motion to stay the judgement pending appeal. *See* docket entries #41, 40. Respondent then filed a motion for immediate consideration of the motion to stay on June 19, 2007. *See* docket entry #46. The matter was referred to Magistrate Whalen. The Magistrate Judge granted Respondent's motion for immediate consideration, *see* docket entry #50, and on June 28, 2007, he issued a Report and Recommendation as to the motion to stay pending appeal. The Report and Recommendation recommends that Respondent's motion to stay pending appeal be granted. *See* docket entry #49. Magistrate Whalen

also informed the parties that they had ten days to file objections to the Report and Recommendation. Due to the time sensitive nature of the matter, the Court telephoned each attorney of record and requested that any objections be filed no later than close of business on July 3, 2007. No party filed objections.

The Court's standard of review for a magistrate judge's report and recommendation depends upon whether a party files objections. If a party does not object to the report and recommendation, the Court does not need to conduct a review by any standard. *See Lardie v. Birkett*, 221 F. Supp. 2d 806, 807 (E.D. Mich. 2002) (Gadola, J.). As the Supreme Court observed, "[i]t does not appear that Congress intended to require district court review of a magistrate's factual or legal conclusions, under a de novo or any other standard, when neither party objects to those findings." *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Because neither party filed timely objections to Magistrate Judge Whalen's report and recommendation, *see* 28 U.S.C. § 636(B)(1)(c); Fed. R. Civ. P. 6(e), this Court need not conduct a review.

ACCORDINGLY, IT IS HEREBY ORDERED that the Report and Recommendation [docket entry #49] is **ACCEPTED** and **ADOPTED** as the opinion of this Court.

IT IS FURTHER ORDERED that Respondent's Motion to Stay the Judgment Pending Appeal, [docket entry #40] is **GRANTED**.

IT IS FURTHER ORDERED that the judgement is **STAYED** until the matter is resolved in the Court of Appeals for the Sixth Circuit.

SO ORDERED.

Dated: July 10, 2007

s/Paul V. Gadola
HONORABLE PAUL V. GADOLA
UNITED STATES DISTRICT JUDGE

Certificate of Service

I hereby certify that on July 10, 2007, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

Mark N. Awada; Brian O. Neill, and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants: _____.

s/Ruth A. Brissaud

Ruth A. Brissaud, Case Manager

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